



"We don't receive wisdom; we must discover it for ourselves after a journey that no one can take for us or spare us."

- Marcel Proust

Purchasing Update

Division of Purchasing, Idaho Department of Administration
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This issue of *Purchasing Update* discusses the various Idaho preference laws and Rules of the Division of Purchasing regarding small, minority, and disadvantaged businesses, tie bids, printing, reciprocal preference, and recycled paper products.

Who Qualifies as an "Idaho" Vendor?

To understand Idaho business preferences, we first need to define what an "Idaho" vendor is. Idaho vendors are defined as those that are domiciled in Idaho or have a significant Idaho economic presence. Domiciled means where a corporation is chartered or incorporated or where a sole proprietor or partnership is located or has its permanent headquarters. Bidders domiciled in states other than Idaho who have a "significant Idaho economic presence" for one year preceding the bid date, may be considered an Idaho domiciled bidder. "Significant Idaho economic presence" is a phrase defined in Idaho Code section 67-2349. This section says a vendor is considered "domiciled" if they have maintained a staffed office, sales office, sales outlet, manufacturing facility, or warehouse for at least one (1) year and, if a corporation, be registered and licensed to do business in the state of Idaho with the Office of the Secretary of State.

Obviously, local small independent businesses are "Idaho" vendors, however, even large corporate giants can be considered as "Idaho" businesses if they have had established offices in Idaho for a least a year.

Small, Minority, and Disadvantaged Businesses

There are no preferences, quotas or goals for purchasing from small, minority, or disadvantaged businesses in Idaho Code. The Division of Purchasing does not collect or track this type of information. However, several state agencies (ITD, DEQ, IDHW, IDWR, and others) receive federal money for projects that do require participation of small, minority, or disadvantaged businesses. The Disadvantaged Business Enterprises Supportive Services Program (DBE), administered by the Idaho Transportation Department, assists minority, women, and disadvantaged business owners in developing and promoting their businesses in the highway construction industry. They will make this information available to other state agencies that have a need for it. Contact the DBE coordinator, Liz Healas at 208-334-8567 or healas@itd.state.id.us for more information. See the DBE web site at: <http://www2.state.id.us/itd/civil/external.htm>

Encouraging Small and Local Businesses to Bid

Even though there are no laws requiring that Idaho businesses receive bidding preferences (except for printing – see below), there is a statute and rule that promotes bidding opportunities for Idaho vendors. Idaho Code section 67-5718 (3) encourages small and local businesses to bid by requiring that at least three (3) Idaho vendors be solicited for bids. Rule 44.03 of the Division of Purchasing extends this requirement to quotations (over \$5,000 and under \$50,000).

67-5718. REQUISITIONS FOR PROPERTY -- NOTICE -- FORM -- GUARANTEE -- PROCEDURE FOR BIDDING.....(3) To enhance small business bidding opportunities, the administrator shall seek a minimum of three (3) bids from vendors having a significant Idaho economic presence as defined in section 67-2349, Idaho Code.....

IDAPA 38.05.01 Rules of the Division of Purchasing
044. SMALL PURCHASES.

.....03. Procedure. Unless impractical or impossible and documented in the file, these small purchase procedures require the acquisition to be publicly posted. Except as otherwise provided in this rule, no less than three (3) vendors having a significant Idaho presence as defined by Section 67-2349, Idaho Code, shall be solicited to submit quotations. Award shall be made to the responsible and responsive bidder offering the lowest acceptable quotation. The purchasing file will be fully documented for unacceptable quotations. Should it be impractical or impossible to solicit three (3) vendors, the file shall be fully documented and every effort should still be made to obtain the most favorable terms, conditions and price possible.....

Tie Bid Preferences

In cases where a tie bid occurs, Idaho Code section 67-5718 (5) and Rule 82.01.b of the Division of Purchasing allows a preference to Idaho products and Idaho vendors. Other than the printing preference described below, this is the only instance of a possible preference for an Idaho-produced product in statute.

67-5718. REQUISITIONS FOR PROPERTY -- NOTICE -- FORM -- GUARANTEE -- PROCEDURE FOR BIDDING.....(5) Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in the Idaho Code.....

IDAPA 38.05.01 Rules of the Division of Purchasing
082. TIE BIDS.

The following provisions shall apply to tie bids as defined herein.

01. Tie Bids - Definition. Tie bids are low responsive bids from responsible bidders that are identical in price or score.

02. Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the buyer, award shall be made in any permissible manner that will discourage tie bids. Procedures that may be used to discourage tie bids include:

b. Award to an Idaho resident or an Idaho domiciled bidder or for an Idaho produced product where other tie bid(s) are from out of state or to a bidder submitting a domestic product where other tie bid is for foreign (external to Idaho) manufactured or supplied property;

Printing Preference

Two Idaho statutes allow for a printing preference, I.C. 60-101 and I.C. 60-103. Originally enacted in 1903 and last amended in 1980, this section of code provides for a 10% preference for printing done in Idaho (with the exception of printing of state laws). For bids or quotations for printing being produced outside of the State of Idaho, 10% additional cost is added to the bid for evaluation purposes only. It applies to all aspects of a printing project; printing, engraving, binding, and stationery work. If any portion of a printing project is performed outside of the state, then the printing preference is applied. This section of code applies to all public agencies; state, county, city, local, school districts, etc. and has no dollar limitation.

60-101. CONTRACTS FOR STATE PRINTING -- EXECUTION WITHIN STATE -- EXCEPTION. All printing, binding (excluding binding for state supported libraries), engraving and stationery work executed for or on behalf of the state, and for which the state contracts, or becomes in any way responsible, shall be executed within the state of Idaho, except as provided in section 60-103, Idaho Code. Provided, however, that this section shall not apply to any compilation, publication or codification of the laws of the state of Idaho.

60-103. EXCEPTION IN CASE OF EXCESSIVE CHARGE -- EXCEPTIONS FOR LACK OF PRODUCTION FACILITIES ON BIDS ON STATE WORK. (a) Whenever it shall be established that any charge for printing, engraving, binding (excluding binding for state supported libraries) or stationery work is in excess of the charge usually made to private individuals for the same kind and quality of work, then the state or county officer or officers having such work in charge shall have power to have such work done outside of said county or state, but nothing in this chapter shall be construed to oblige any of said officers to accept any unsatisfactory work.

(b) Any work referred to in section 60-101, Idaho Code, and which is to be executed for or on behalf of the state may be executed outside of this state in any case (1) where the execution of such work shall require the use of a technique or process which cannot be performed through the use of physical production facilities located within this state and the use of such technique or process is essential to a necessary function to be served by the

printing, binding, engraving or stationery work required; (2) where, after requests for proposals or bids have been made or notice thereof has been given as required by section 67-5718, Idaho Code, as amended, no bid or proposal is made thereon by any person, firm or corporation proposing to execute such work within this state, or (3) where, after requests for proposals or bids have been made or notice thereof given as required by section 67-5718, Idaho Code, the lowest bid from a person, firm or corporation proposing to execute such work within this state is more than ten percent (10%) more than the lowest bid from a person, firm or corporation proposing to execute such work outside this state.

Reciprocal Preference Laws

Some states and countries provide a preference for vendors within their borders and add a percentage to bids received from outside states. Where that happens, the State of Idaho responds (reciprocates) in like manner by adding the same percentage to bids received from vendors who are "domiciled" in those states or countries. This applies to the purchases of materials, supplies, equipment, services, and public works projects. Idaho Code sections 67-2348 and 67-2349 apply to any department, division, bureau or agency thereof, city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body that solicits competitive bids. The law is applicable to any purchase that is bid, regardless of the dollar amount, and is not limited to the United States. It is not applicable to purchases that are not competitively bid, such as: small purchases under \$5,000, sole source purchases, emergency purchases, and other purchases that are exempt from bidding (Rehabilitation Agencies, Correctional Industries, the Federal Government, Professional and Consultant Services under \$50,000, Statewide and Agency Contracts and Price Agreements, Training Travel, Lodging, Seminars, and Meeting Rooms under \$50,000, and any other purchase that may be exempted from bidding by the Division of Purchasing by policy directives.

In determining the lowest responsible bidder, a percentage increase should be added to each out-of-state bidder's bid price, which is equal to the percent of preference given to local bidders in the bidder's home state. That is, if the low bidder is from a state that grants a 10 percent preference to its own in-state bidders, the Idaho agency must add 10 percent to that bidder's price when evaluating the bid. It is only applied to bid evaluations when comparing bids from Idaho "domiciled" vendors with bids from out-of-state vendors with a preference in their state. There is no need to apply any percentage when comparing one out-of-state bid with another out-of-state bid. In no instance will the increase (penalty percentage) actually be paid to a vendor whose bid is accepted.

A complete listing of the preference laws of all states is available on the Internet at the purchasing web site at: <http://www2.state.id.us/adm/purchasing> From the purchasing homepage, click on *Agency Info*, scroll down to *Laws, Rules, and Policy Directives*, and then choose the *Reciprocal Preference Information 2002* link.

67-2348. PREFERENCE FOR IDAHO DOMICILED CONTRACTORS ON PUBLIC WORKS. To the extent permitted by federal laws and regulations, whenever the state of

Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract to a contractor for any public works, the contractor domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible contractor domiciled in Idaho as would be required for such an Idaho domiciled contractor to succeed over the bidding contractor domiciled outside Idaho on a like contract being let in his domiciliary state.

67-2349. PREFERENCE FOR IDAHO SUPPLIERS AND RECYCLED PAPER PRODUCTS FOR PURCHASES. (1) To the extent permitted by federal laws and regulations, whenever the state of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract for purchase of any materials, supplies, services or equipment, the bidder domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible bidder domiciled in Idaho as would be required for such an Idaho domiciled bidder to succeed over the bidder domiciled outside Idaho on a like contract being let in his domiciliary state. For the purposes of this section, any bidder domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled bidder, provided that there exists for a period of one (1) year preceding the date of the bid a significant Idaho economic presence as defined herein. A significant economic presence shall consist of the following (a) That the bidder maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and (b) If a corporation be registered and licensed to do business in the state of Idaho with the office of the secretary of state. (2) In the evaluation of paper product bids, those items that meet recycled content standards may be given not more than a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder.

Recycled Paper Preference

While not a specific preference for Idaho vendors, a 5% preference for recycled paper was added to Idaho Codes 67-2349 and 67-5717 in 2000.

67-2349. PREFERENCE FOR IDAHO SUPPLIERS AND RECYCLED PAPER PRODUCTS FOR PURCHASES.

.....(2) In the evaluation of paper product bids, those items that meet recycled content standards may be given not more than a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder.....

67-5717. POWERS AND DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF PURCHASING. The administrator of the division of purchasing:

.....(6) May, in the evaluation of paper product bids, give those items that meet the recycled content standards as specified by the administrator a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder;.....

Legislative News

The State Board of Examiners has introduced House Bill 13, which, if adopted, will change how surplus personal property is disposed of. In the current law, agencies must either transfer property to another public agency or offer it for sale at a public auction or by sealed bids through newspaper advertisements. The proposed changes will eliminate that requirement and allow for the sell, transfer, recycle, or discard of the property by the agency according to new internal management policies and procedures to be developed by the Board of Examiners. Track the progress of this bill at: <http://www3.state.id.us/oasis/H0013.html>